

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William MacLure	Team: Squad #11	CCRB Case #: 201904342	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/08/2019 9:30 PM	Location of Incident: 453 Mother Gaston Avenue	Precinct: 73	18 Mo. SOL 11/8/2020	EO SOL 6/25/2021	
Date/Time CV Reported Mon, 05/20/2019 10:56 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/20/2019 10:56 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Volodymyr Burdeynny	14915	954580	PSA 2
2. POM Godwin Ngai	01239	954175	PSA 2
3. SGT Ricardo Lewis	02411	936948	PSA 2

Officer(s)	Allegation	Investigator Recommendation
A.POM Volodymyr Burdeynny	Abuse: Police Officer Volodymyr Burdeynny frisked § 87(2)(b)	
B.POM Volodymyr Burdeynny	Abuse: Police Officer Volodymyr Burdeynny searched the vehicle in which § 87(2)(b) was an occupant.	
C.SGT Ricardo Lewis	Abuse: Sergeant Ricardo Lewis searched the vehicle in which § 87(2)(b) was an occupant.	
D.POM Godwin Ngai	Abuse: Police Officer Godwin Ngai searched the vehicle in which § 87(2)(b) was an occupant.	
E.SGT Ricardo Lewis	Abuse: Sergeant Ricardo Lewis failed to provide § 87(2)(b) with a business card.	
F.POM Godwin Ngai	Abuse: Police Officer Godwin Ngai failed to provide § 87(2)(b) with a business card.	

Case Summary

On May 20, 2019, § 87(2)(b) filed this complaint with the CCRB over the phone.

On May 8, 2019, at approximately 9:30 p.m., § 87(2)(b) was parked in a bus stop in the vicinity of 453 Mother Gaston Blvd, in Brooklyn. PO Volodymyr Burdeynny, PO Godwin Ngai, and Sgt. Ricardo Lewis, of PSA 2, stopped § 87(2)(b). PO Burdeynny informed § 87(2)(b) that he smelled marijuana and asked him to step out of the vehicle. PO Burdeynny frisked § 87(2)(b) (**Allegation A: Abuse of Authority, § 87(2)(g)**). PO Burdeynny, Sgt. Lewis, and PO Ngai searched § 87(2)(b)'s vehicle (**Allegations B through D: Abuse of Authority, § 87(2)(g)**). Sgt. Lewis and PO Ngai did not provide business cards to § 87(2)(b) (**Allegations E and F: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) was not summonsed or arrested.

§ 87(2)(b) provided cell phone video of this incident (Board Reviews 01 and 02), and Body Worn Camera (BWC) footage was received for PO Burdeynny (Board Reviews 03 and 04), PO Ngai (Board Reviews 05 and 06), and Sgt. Lewis (Board Reviews 07 and 08).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Volodymyr Burdeynny frisked § 87(2)(b).

It is undisputed that PO Burdeynny frisked § 87(2)(b). § 87(2)(b) testified (Board Review 09) that PO Burdeynny instructed him to step out of his vehicle because he smelled an odor of marijuana. § 87(2)(b) denied that he smoked marijuana and denied that there was an odor of marijuana in his vehicle, or in the vicinity of his vehicle during the incident. PO Burdeynny frisked § 87(2)(b)'s pants pockets, legs, and groin area. § 87(2)(b) was alone during this incident.

PO Burdeynny testified (Board Review 10) that he detected an odor of marijuana that seemed to be coming from § 87(2)(b)'s vehicle while he was talking with him. PO Burdeynny could not tell if the odor was of burnt or unburnt marijuana. PO Burdeynny asked § 87(2)(b) to exit the vehicle so that he could search the vehicle. PO Burdeynny frisked § 87(2)(b)'s waist and pants to make sure that he did not have anything that could harm the officers. There was nothing specifically that made PO Burdeynny believe that § 87(2)(b) had something on him that could hurt the officers. Aside from the odor of marijuana, there was nothing else that made PO Burdeynny believe that there might be contraband inside the vehicle.

PO Ngai's (Board Review 11) and Sgt. Lewis' (Board Review 12) testimonies were consistent with that of PO Burdeynny.

All of the officers' BWC video is consistent with above civilian and officer testimony.

The smell of marijuana smoke, with nothing more, can be sufficient to provide police officers with probable cause to search an automobile and its occupants, People v. Chestnut 43 A.D.2d 260 (1974) (Board Review 13). In People v. Norman, courts accepted this justification for the search of a parked vehicle, People v. Norman 142 AD3d 1107 (2016) (Board Review 18).

Officers may frisk the driver or occupants of a vehicle only if he has a reasonable basis for suspecting that the individual is armed and may be dangerous, People v. Smith, 134 A.D.3d (2015) (Board Review 14).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Volodymyr Burdeynny searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (C) Abuse of Authority: Sergeant Ricardo Lewis searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (D) Abuse of Authority: Police Officer Godwin Ngai searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Burdeynny, Sgt. Lewis, and PO Ngai searched § 87(2)(b)'s vehicle, including the trunk. As noted above, it is disputed whether or not an odor of marijuana was present during this incident.

PO Burdeynny, Sgt. Lewis, and PO Ngai all cited the odor of marijuana as the sole justification for searching § 87(2)(b)'s vehicle.

The smell of marijuana smoke, with nothing more, can be sufficient to provide police officers with probable cause to search parked automobile and its occupants, People v. Chestnut 43 A.D.2d 260 (1974) (Board Review 13), People v. Norman 142 AD3d 1107 (2016) (Board Review 18).

§ 87(2)(g)

Allegation (E) Abuse of Authority: Sergeant Ricardo Lewis failed to provide § 87(2)(b) with a business card.

Allegation (F) Abuse of Authority: Police Officer Godwin Ngai failed to provide § 87(2)(b) with a business card.

It is undisputed that PO Burdeynny provided a business card to § 87(2)(b) but Sgt. Lewis and PO Ngai did not. It is also undisputed that § 87(2)(b) did not receive a summons and was not arrested.

During a law enforcement activity, including frisks and vehicle searches, officers shall offer a business card to such person at the conclusion of any such activity that does not result in an arrest or summons, NYC Administrative Code, Section 14-174, "Identification of Police Officers" (Board Review 15).

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
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- PO Burdeynyy has been a member of service for six years and has been a subject in five CCRB complaints and 14 allegations, of which one was substantiated.
 - 201801245 involved a substantiated allegation of a vehicle search against PO Burdeynyy. The board recommended formalized training and the NYPD imposed formalized training.
- Sgt. Lewis has been a member of the service for 14 years and has been a subject in 10 cases and 19 allegations, none of which have been substantiated to date. § 87(2)(g)
- PO Ngai has been a member of the service for six years and has been a subject in eight CCRB complaints and 20 allegations, none of which have been substantiated to date. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of July 10, 2019, the New York City Office of the Comptroller had no record of a Notice of Claim being filed regarding this complaint (Board Review 17).
- As of January 14, 2019, § 87(2)(b) had no criminal conviction history.

Squad No.: _____

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature	Print Title & Name	Date
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